

January 16, 2004

Dr. Margo Schwab
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW,
New Executive Office Building, Room 10201
Washington, DC 20503

RE: OMB's "Proposed Bulletin on Peer Review and Information Quality"

Dear Dr. Schwab:

As Chairman of the House Committee on Resources, I am pleased to have the opportunity to comment on the Office of Management and Budget's (OMB) "Proposed Bulletin on Peer Review and Information Quality", as published in 68 Federal Register 54023-54029 (September 15, 2003). I support the concepts in the proposed bulletin and believe they are long overdue. I commend OMB for its on-going commitment and efforts to improve federal regulations through independent and objective peer review of significant regulatory activities.

From my earliest days in Congress, I have been an avid proponent of peer review as a key component of the sound science necessary to effectively implement the Endangered Species Act (ESA). I have authored and co-sponsored several bills dating back to the 103rd Congress that urge the utilization of sound science to create a balanced approach to species conservation.¹ Each of these pieces of legislation stress the need for independent review of the science used for core ESA decisions such as critical habitat designation, listing and recovery. The absence of this objective review will lead to regulatory decisions wrought with negative consequences. Indeed, a recent GAO report noted that the U.S. Fish and Wildlife Service has attempted to implement peer review procedures for the ESA to make decisions based on the best available science.² Importantly, the report notes that the current procedures are inconsistently applied across the Service. This points out the need for guidelines like those set forth in the draft bulletin.

I am pleased that OMB has crafted guidelines that do not "reinvent the wheel" by creating duplicative peer reviews which would merely add another needless layer of bureaucratic oversight. Rather, the guidelines, as set out in Sections 2 and 3, provide the necessary encouragement for agencies to develop "scientifically rigorous peer review" procedures that are targeted at the most significant regulatory actions. Clearly, critical habitat designations and listing decisions would fall under this category and be subject to thorough peer review. I also support the criteria in Section 3 for selection of peer reviewers. It is imperative for the peer

¹ See e.g., H.R. 3705 (107th Congress), H.R.3160 (106th Congress), H.R. 2275 (104th Congress) and H.R.3978 (103rd Congress).

²GAO-03-803, *Additional Guidance Needed for Critical Habitat Designations*, September 2003.

reviewers to not have “real or perceived” conflicts that would color their decisions. Eliminating and providing methods to overcome bias is the only way to ensure that the peer reviewers are driven by science and not politics. Finally, I strongly believe that any additional time quality peer review would take is not only helpful to the regulatory process, but necessary to avoid poor agency decision making. I reject the argument that encouraging scientific peer review and public comment will cause needless delay and have no public benefit. To the contrary, hastily crafted regulatory actions drafted only by agency personnel usually provide little guidance, often create economic hardships and ultimately lead to litigation. These types of rules do little if anything to achieve the mission of the underlying legislation. There is little doubt that the peer review processes laid out in the Bulletin are targeted at mitigating these unfortunate and damaging consequences.

I must point out that the OMB peer review guidance must not be the endpoint for sound science in the regulatory process. In addition to stringent peer review of the regulation, it is important to require the underlying science be reproduced and verified by those with appropriate expertise. These two steps will greatly add to ensuring that the underpinnings of significant regulations have withstood the rigors of independent scrutiny.

The draft Bulletin provides a significant first step towards refining the regulatory process that continues to restrict effective implementation of the ESA. I look forward to reviewing the final guidelines when they are published.

Sincerely,

RICHARD W. POMBO
Chairman
House Committee on Resources

